

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

| | | |
|----------------------------|---|----------------------|
| DATATREASURY CORPORATION, | § | |
| <i>Plaintiff</i> | § | |
| | § | |
| v. | § | NO. 2:05cv291 |
| | § | |
| WELLS FARGO & COMPANY, | § | Hon. David Folsom |
| WELLS FARGO BANK, NATIONAL | § | Hon. Caroline Craven |
| ASSOCIATION, | § | (Jury) |
| <i>Defendants.</i> | § | |

**PLAINTIFF DATATREASURY CORPORATION'S RESPONSE AND
OPPOSITION TO DEFENDANTS' MOTION TO STAY LITIGATION**

COMES NOW DataTreasury Corporation ("DataTreasury"), Plaintiff in the above-entitled and numbered civil action, and files the instant Response and Opposition to the Motion to Stay filed March 24, 2006 by Defendants Wells Fargo & Company and Wells Fargo Bank, National Association ("Wells Fargo").

Five other defendants in this litigation (SVPCo, Remitco/IPS, First Data, Viewpointe and Magtek) have previously filed stay motions just like that filed by Wells Fargo. Each of those motions has been comprehensively briefed for the Court by the parties. Wells Fargo's contribution to the campaign to derail this litigation adds nothing new. Indeed, Wells Fargo's brief pleading concedes that, apart from a few editorial comments, Wells Fargo has no new argument or authority to add to that earlier adduced by other defendants.

DataTreasury opposes the relief sought by Wells Fargo, as it has opposed all motions to stay filed by other and earlier defendants. DataTreasury has elsewhere debunked the notion that "the entire [reexamination] process is likely to be concluded in

eighteen months or less” (Stay Motion, pg. 2) and will not burden the Court here with a repetition of the authority, statistics, and reasoning showing that this guess by Wells Fargo is clearly unrealistic. Similarly, the Court is already aware that DataTreasury disagrees with the view, espoused by Wells Fargo and several other defendants, that the litigation path ahead resembles some form of fearsome gauntlet, and that the Court should therefore take cover. *See* Stay Motion, pp. 2-3. The Court has already presided over protracted litigation concerning these patents. The Court has construed the claims of the ‘988 and ‘137 patents, and has received and considered all manner of summary judgment pleadings pertaining to these patents. In view of the circumstances, discussed in detail elsewhere, the road ahead for the Court in this litigation is not so arduous or uncertain as to counsel in favor of a litigation stay.

Lastly, as is true of Bank of America and Wachovia (two other defendants proceeding lockstep with this defendant, all of whom filed their stay motions concurrently), Wells Fargo’s lawyers were well-aware when they filed their stay motion that a month previous, on February 24, 2006, DataTreasury filed a new lawsuit against various defendants, including Wells Fargo, for infringement of additional patents recently acquired by DataTreasury which are not subject to reexamination by the United States Patent and Trademark Office (“USPTO”). *See* EDTX Cause No. 2:06cv72 (DF). As explained earlier by DataTreasury, the circumstances entailed by that filing render a litigation stay ill-advised and inappropriate.

For the reasons stated herein, and based on the arguments and precedent adduced in DataTreasury’s briefing as to the stay motions earlier advanced by other defendants, no stay should be granted in this litigation.

Respectfully submitted,

/s/ KARL RUPP

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all counsel of record on the 17th day of April, 2006.

/s/

KARL RUPP